

**OFFICIAL INFORMATION\*\*CONFIDENTIAL\*\*EVIDENCE CODE SECTION 1040  
INTRADEPARTMENTAL CORRESPONDENCE**

DATE: March 22, 2021

TO: Honorable Board of Police Commissioners

FROM: Inspector General

SUBJECT: OFFICER-INVOLVED SHOOTING 018-20 FOR 4/6/21 CLOSED-  
SESSION AGENDA

<u>Division</u>	<u>Date</u>	<u>Time</u>	<u>Duty-On ( ) Off (X)</u>	<u>Uniform-Yes ( ) No (X)</u>
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Outside City	5/3/20	1:00 a.m.		
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<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
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Tamayo, I./PO III	13 years, 9 months
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Total Involved Officer(s)

1 x PO III

<u>Suspect</u>	<u>Deceased ( )</u>	<u>Wounded (X)</u>	<u>Non-Hit ( )</u>
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Does not apply.<sup>1</sup>

**COP Recommendations**

**Tactics** – Administrative Disapproval, Officer Tamayo.

**Drawing/Exhibiting** – Out of Policy, Administrative Disapproval, Officer Tamayo.

**Lethal Use of Force** – Out of Policy, Administrative Disapproval, Officer Tamayo.

**IG Recommendations**

**Tactics** – Same as COP.

**Drawing/Exhibiting** – Same as COP.

**Lethal Use of Force** – Same as COP.

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<sup>1</sup> This incident involved Officer Tamayo shooting and wounding an off-duty police officer.

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## INVESTIGATION

### Annotated Force Investigation Division (FID) Incident Summary<sup>2</sup>

**Synopsis:** Three sworn employees of the Los Angeles Police Department were off-duty and camping in the San Bernardino County desert. One employee, a police officer, pointed and discharged his pistol at his friend, also a police officer, striking him in the left shoulder.

#### **Investigative Summary**

Sergeant I Javier Vega, Serial No. 36750, assigned to Hollenbeck Patrol Division, Police Officer II Mark Mascareno, Serial No. 32570, and Police Officer III Ismael Tamayo, Serial No. 38258, assigned to Newton Patrol Division and Newton Area vice, respectfully, have been friends for approximately nine years. According to Officer Tamayo, all three met at Newton Division and over the years have developed a friendship outside of work that is inclusive of their respective spouses and children.

In the weeks preceding this incident, the three friends discussed a plan to drive to the San Bernardino County desert with the intent to camp out for the night and engage in target practice with their various guns. According to Officer Tamayo, he suggested an area he was familiar with and had been to for the purpose of shooting guns. This area was called Stoddard Wells Off-Highway Vehicle (OHV) and was an area managed by the Bureau of Land Management (BLM) northeast of Victorville, California.



<sup>2</sup> The Incident Summary presented here is reproduced from FID's report regarding this case, and is supplemented with annotations by the OIG. All OIG annotations are referenced as an "OIG Note." All other references and citations in the reproduced FID Incident Summary (e.g., Investigators' Notes or Addenda Items) are reproduced directly from FID's report. Unless otherwise stated, all information provided in OIG annotations is derived from FID's investigation of this incident.

According to the BLM website, the Stoddard Wells OHV area does not restrict people from camping, enjoying recreational off-highway vehicles, or shooting weapons. Officers Tamayo and Mascareno, and Sergeant Vega, believed the entire area off Stoddard Wells Road was BLM land and if they were following safe practices, they were not violating any laws.<sup>3</sup>

The three agreed on a date and on Saturday, May 2, 2020, they loaded up their respective trucks. At approximately 1530 hours, Officer Tamayo drove to Sergeant Vega's residence to pick him up. They loaded Vega's camping gear into Tamayo's truck and drove to the San Bernardino County desert. They arrived in the area and found it was very busy with other campers and off-highway vehicles.

At approximately 1840 hours, after driving around the area looking for a suitable place to camp and safely discharge their weapons, they settled on a location. This location had minimal campers, provided a large mountain as the backdrop for their shooting, and was not crisscrossed with trails that any unsuspecting off-highway vehicles could access.

Prior to establishing camp, Officer Tamayo contacted a gentleman at the trailer immediately south of and closest to the area he wanted to set up camp. He first verified the camper was not planning on shooting any weapons toward the mountain. He (Tamayo) then advised the camper he was planning on setting up camp north of him and that he would be firing weapons in a northerly direction toward the mountain. After establishing this would not be a concern for the camper, Tamayo drove approximately one quarter mile up the hill on a dirt trail to a suitable position to establish camp (Investigators' Note No. 1).

In the meantime, Officer Mascareno was driving himself to the desert in his own truck. Once in the desert and off the highway, he communicated with Officer Tamayo and Sergeant Vega through a two-way radio and via cellular text messages. They guided him to their location, and he arrived at the camp site at approximately 1900 hours.

When setting up the campsite, Officer Tamayo parked his truck facing south while Officer Mascareno parked perpendicular to the front bumper of Tamayo's truck and facing west. This created a L-shaped barrier to block the wind. The remainder of the camp was set-up in the interior of the protected area created by the trucks.

Sleeping arrangements were established with Officer Tamayo setting up a cot along the driver's side of his truck. Officer Mascareno set up a similar cot along the passenger side of his truck, while Sergeant Vega set-up a small tent between the two cots with the opening facing to the east, as depicted in the below picture. A makeshift firepit, created with a collection of rocks, was situated northeast of Vega's tent. A table with a grill and miscellaneous items, not depicted in the below picture, was set-up just east of the tent.

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<sup>3</sup> According to Officer Tamayo and Sergeant Vega, they checked the BLM website to verify the boundaries and restrictions of the BLM land.





Shortly after his arrival, Officer Mascareno indicated he wanted to begin shooting and used steel plates set-up toward the mountain by Officer Tamayo as targets. Tamayo and Sergeant Vega joined Mascareno in the target practice; however, they only fired a small number of rounds each.

At approximately 1930 hours, Officer Tamayo began cooking hamburgers on the grill and it was at this time that he had his first beer. With dinner served at approximately 2030 hours, the three campers sat down around the campfire, ate and drank beer, while they talked and listened to music.<sup>4</sup>

Throughout the night Officer Tamayo believed he drank four to six beers, while Officer Mascareno believed he drank four to five beers and Sergeant Vega believed he drank approximately four beers. After dinner the three drank whiskey around the campfire and according to Tamayo, he believed he had approximately six ounces of whiskey in two three-ounce servings in a cup.

According to all three individuals, the conversation around the camp throughout the day and night was light and jovial. Neither individual saw any indication that either of them, especially Officer Tamayo, was upset or being affected by personal events. In fact, Officer Mascareno and Sergeant Vega, each acknowledged they had known Tamayo for more than nine years and both claimed he was acting as he always did, mild mannered and even keeled. Although the three had been drinking, no one was showing any indication of being unusually drunk, acting in an irrational manner, or incapable of caring for themselves. According to Mascareno and Vega, at approximately midnight, Tamayo cooked a second round of food that they enjoyed around the campfire.

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<sup>4</sup> According to Officer Tamayo, he ate two hamburgers.

On Sunday, May 3, 2020, at approximately 0100 hours, Officer Tamayo, who was sitting around the campfire, announced he was going to urinate. According to Tamayo, he stood up and walked approximately 30 to 40 feet beyond his truck to a bush and urinated onto the ground.

***Shortly after Officer Tamayo walked away to urinate in the desert, he unholstered the pistol he was carrying on his hip, pointed it at Officer Mascareno, and shot him. The following is an account of the events that occurred from the perceptions of Mascareno and Sergeant Vega followed by that of Officer Tamayo:***

According to **Officer Mascareno** and **Sergeant Vega**, they believed Officer Tamayo walked to the west beyond his truck to urinate. Mascareno, from his seat at the fire, looked to the west in the direction Tamayo had walked and saw him facing west and believed he was urinating near a bush. He (Mascareno) then returned his attention to the fire. After a short period of time, he again looked west and saw the silhouette of Tamayo now facing south standing adjacent to the passenger side door of his (Tamayo's) truck.<sup>5</sup>

According to Mascareno, Tamayo appeared odd standing in that position. He could not see any light from the interior truck light or the glow of a cell phone that Tamayo could have been using and was unsure of what he was doing. Mascareno said, "Hey dude. Why are you being so creepy."<sup>6</sup> Tamayo did not respond.

Officer Mascareno disregarded Officer Tamayo, stood up, and walked toward his (Mascareno's) truck. Sergeant Vega, who was standing on the south side of his tent, between the tent and Mascareno's truck, heard Mascareno say, "Dude, what the fuck are you doing with the gun?"<sup>7</sup>

According to Officer Mascareno, as he walked from the campfire toward his truck, he saw that Tamayo was still on the passenger side of his (Tamayo's) truck but was now standing adjacent to the right rear tire facing east (toward the campfire). Mascareno identified Tamayo as holding a Glock semiautomatic pistol in both hands with his arms extended over the truck bed, pointing the pistol between he and Vega.

According to Officer Mascareno, Officer Tamayo stated, "Hey, get back guys. Get back. Just stay back."<sup>8</sup> Mascareno stated, "Hey, just put your gun away! Put your gun away!"<sup>9</sup> According to Mascareno, Tamayo lowered his gun and returned to his previous

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<sup>5</sup> Mascareno could clearly see Tamayo's silhouette from the light provided by the campfire, a lighted lantern in the camp, and the moonlight.

<sup>6</sup> Mascareno, Page 30, Lines 9-10.

<sup>7</sup> Vega, Page 25, Lines 3-4.

<sup>8</sup> Mascareno, Page 31, Lines 10-11.

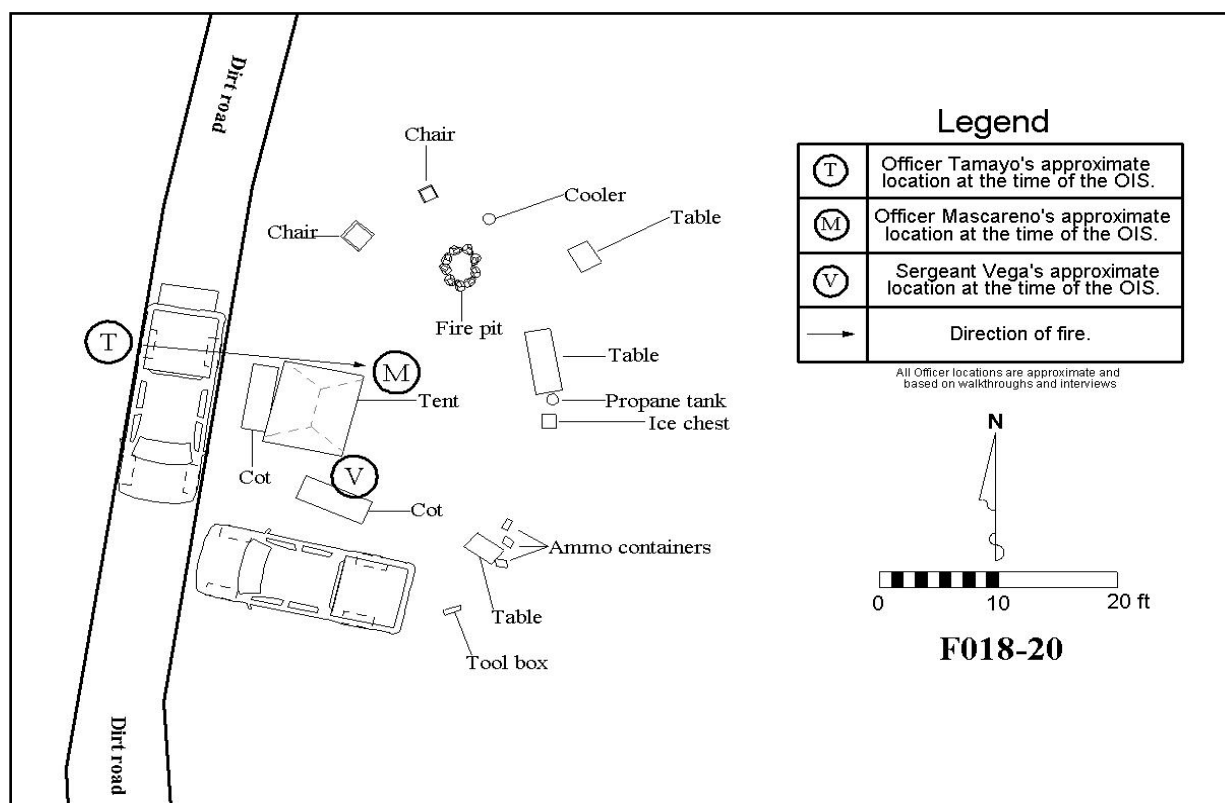
<sup>9</sup> *Id.*, Page 31, Line 17-18.

position near the passenger side door facing south. Mascareno ignored what had just occurred and believed he (Mascareno) returned to the campfire.

Remembering he needed to get into his truck, Officer Mascareno again walked toward his truck. Looking west, he saw that Officer Tamayo was again standing near the right rear tire of his truck facing east. Tamayo was again holding his Glock semiautomatic pistol in both hands with his arms extended over the truck bed and according to Mascareno, was pointing his pistol directly at him (Mascareno).

**Note:** Sergeant Vega described seeing Officer Tamayo point the pistol at Officer Mascareno only one time. During that one time, he believed Tamayo was pointing the pistol at Mascareno, exclusively. During his interview, Vega was asked if Tamayo said anything while pointing the pistol at Mascareno and according to Vega, he could not recall if Tamayo did or did not say anything.

According to Officer Mascareno, before he could verbally respond, Officer Tamayo fired three rounds at him; however, he only observed two distinct muzzle flashes. Mascareno believed it was the third round that struck him in his left shoulder near the clavicle and exited the rear of his shoulder.



Positions of all three employees at the time of shots fired.

**OIG Note No. 1:** *Officer Mascareno stated (referring to Officer Tamayo), “He’s at the same exact position with his gun in his hand but now he’s pointing it right at me. So, I’m a little, you know, I feel real unsafe so I’m ready to tell him, like, hey, you know, put -- put the fucking gun away but I don’t finish my sentence and then he fires what I think to be like three rounds at me.”*<sup>10</sup>

According to Sergeant Vega, he observed two muzzle flashes and heard two gunshots. He stepped forward to confront Officer Tamayo and said, “Hey Ish, what the fuck are you doing? Hey, drop the fucking gun!”<sup>11</sup> As Vega approached the front of Tamayo’s truck, Tamayo pointed the pistol at him. Vega again said, “Drop the fucking gun!”<sup>12</sup> According to Vega and Officer Mascareno, Tamayo stated in a threatening, uncharacteristic voice, “Fuck you!”

Officer Mascareno turned to run away and crashed into and over a small table near the rear of his truck. After falling to the ground, he got up and stated, “Hey, you fucking shot me bro. I love you. Why the fuck you shoot me?”<sup>13</sup> Sergeant Vega, in fear, retreated and joined Mascareno toward the rear of his (Mascareno’s) truck. In his movements, Vega turned off the lantern sitting on the table holding the grill. Neither Mascareno nor Vega could see Tamayo and did not know his exact position. However, according to Mascareno, Tamayo was stating, “Mark, Javier. Mark, Javier. Just fall back guys. Just fall back. Fall back.”<sup>14</sup>

Officer Mascareno retrieved a BB-gun with an attached light from inside of his truck. Using the attached light, he scanned the camp and the desert beyond Officer Tamayo’s truck. He spotted Tamayo approximately 20 to 30 yards north of the camp. He described Tamayo as being in a tactical kneeling position with his pistol in his hands, but according to Mascareno, the pistol was not pointed at anything specific.<sup>15</sup> At about this time, Mascareno removed his Colt .38 special pistol from a holster inside of his right front short pocket. However, due to the blood on his hands he was unable to securely hold the pistol and returned it to the holster in his pocket.

Officer Mascareno asked Sergeant Vega to help him find his truck keys he had dropped at the time of the shooting. He believed with Officer Tamayo 20 to 30 yards outside of the camp, he and Vega could start the truck and drive away to get help. However, they were unable to find the keys. The two agreed to walk to one of the two nearby camps

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<sup>10</sup> Mascareno, Page 32, Lines 16-21.

<sup>11</sup> Vega, Page 26, Lines 13-15. Tamayo is called Ish by his friends and is short for Ismael.

<sup>12</sup> *Id.*, Page 26, Line 21.

<sup>13</sup> According to Sergeant Vega and captured in his transcribed statement, Page 27, Lines 9-10.

<sup>14</sup> Mascareno, Page 38, Lines 18-19.

<sup>15</sup> Tactical kneeling position is described as the forward foot on the ground and the trailing knee down.

and ask for help. At this point Mascareno walked south toward the closest camp. In the meantime, Vega called out to Tamayo and tried to establish some communication; however, he was unable to get any response from Tamayo and ultimately, he began walking down the mountain in a southeasterly direction.

At approximately 0106 hours, as he moved away from the camp, Sergeant Vega texted Officer Tamayo's wife, "Call Ish. Tell him to relax." She immediately responded with, "Why? What happened?"<sup>16</sup> At approximately 0109 hours, Vega called her and stated, "Call Ish. He just fucking shot Mark."<sup>17</sup> Immediately following the phone call with Tamayo's wife, he heard a phone ringing in the distance, but believed it went unanswered.

At about this time, Officer Mascareno arrived at the camp located immediately to the south and approximately one third of a mile away. He knocked on the camper and asked them to call 911. After getting no response, he began moving to the east toward a second camp approximately one quarter of a mile away. Christopher and Maritsa Blanco answered the knocks on their trailer and Christopher called 911 (Investigators' Note No. 2).

At approximately 0117 hours, San Bernardino County dispatch received the call. Christopher reported an unknown male was knocking on his trailer door reporting he had been shot. Deputies from the San Bernardino County Sheriff's Department as well as medical personnel were dispatched.

As Sergeant Vega traveled down the mountain, he encountered Officer Tamayo who stated, "Put your hands up! Identify yourself! Put your fucking hands up and identify yourself! Who are you?" Vega stated, "Hey man. It's me. It's Vega, dude. Hey!" and Tamayo responded with, "I don't know who the fuck you are!"<sup>18</sup>

According to Sergeant Vega, Officer Tamayo was again speaking to him with a voice that was uncharacteristic of him. Fearing for his safety, Vega decided to run away, zigzagging as he made his way through the desert.

***The following is an account of the events that occurred from the perceptions of Officer Tamayo after he walked away to urinate:***

According to **Officer Tamayo**, he was approximately 30 to 40 feet west of his truck, facing south, urinating near a bush when he heard a threatening, unrecognizable voice. He believed the voice was coming from approximately 90 feet away to the south; however, he could not see anything in the darkness. Although, Tamayo could not understand what was said, he did perceive what was said to be a threat. He knew the voice was not from Sergeant Vega or Officer Mascareno and upon looking toward the

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<sup>16</sup> Vega, Page 31, Lines 12-13, and Lines 17-18.

<sup>17</sup> *Id.*, Page 31, Lines 24-25.

<sup>18</sup> *Id.*, Page 33, Lines 13-14 and 17-21.

camp, expecting to see his friends near the campfire, he became concerned when he did not see either Vega or Mascareno.

According to Officer Tamayo, he glanced back toward the direction of the voice and heard a single gunshot. He immediately feared he and his friends were being ambushed and that his friends were already taken out or killed, as he could not see them in the camp. Tamayo took a knee and unholstered his Glock 22 .40 caliber semiautomatic pistol from the holster on his right hip. He fired three shots in the direction of the voice and where he had heard the single gunshot come from. Although, he did not have a specific target he believed he was being attacked and by discharging his pistol he hoped to eliminate or deter that threat.

Officer Tamayo feared for his life and reverted to his military training. He moved to his right approximately ten feet and got down to a prone position to avoid detection. From this position he loudly yelled, "Mark, Javier!" and looked toward the camp. He could not see them, received no verbal response, and feared they had been "taken out" by assailants.<sup>19</sup>

He wanted to help his friends but believed there could be numerous assailants in the camp, and they would overwhelm him if he approached. Therefore, according to Tamayo, he believed his best move would be to continue to move up the hill and gain distance from the threat. Once safe, he could use his cellular phone to call 911 and get help for his friends. He then moved up the hill in a northwesterly direction.

According to Officer Tamayo, he had no recollection of having any contact with Officer Mascareno or Sergeant Vega after he walked out of the campsite to urinate. He claimed he never pointed a pistol at Sergeant Vega or Officer Mascareno. He also stated he did not shoot at Mascareno.

At 0119:39 hours, Deputy Jeremiah Vanbrimmer assigned to the San Bernardino County Sheriff's Department Victor Valley patrol was dispatched to the location of the shooting. He immediately responded. At 0141:02 hours, he arrived on scene and was met by Officer Mascareno. According to Vanbrimmer, Mascareno had dried blood on his face and torso and he was using a shirt to apply pressure to a gunshot wound to his left shoulder.

According to Officer Mascareno, he identified he was a police officer and armed with a pistol in his right front pocket. Deputy Vanbrimmer retrieved the pistol and secured it before interviewing Mascareno. According to Vanbrimmer, Mascareno stated he was camping with his friends, Officer Tamayo and Sergeant Vega. Mascareno stated they were drinking and enjoying their time camping and there were no issues or concerns between the three friends until Tamayo pointed a pistol at Mascareno and fired three rounds. Mascareno was struck by one of those rounds in the left shoulder. Mascareno also stated, Tamayo was in the military and he (Mascareno) believed Tamayo was

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<sup>19</sup> Tamayo, Page 42, Line 11.

suffering from Posttraumatic Stress Disorder (PTSD) and was acting as if he was in Afghanistan.

At 0147:34 hours, Sergeant Charles Phillips assigned to the San Bernardino County Sheriff's Department Hesperia patrol arrived on scene. He was immediately followed by Deputy Michael Whitney assigned to the San Bernardino County Sheriff's Department Victor Valley patrol. Whitney retrieved his medical kit from his patrol vehicle and applied first aid to the through and through gunshot wound to Officer Mascareno's left shoulder.

At this time, Sergeant Vega walked out of the darkness with his hands raised over his head. He verbally announced his presence as he walked toward the deputies. According to Deputy Vanbrimmer, Vega announced he was armed, and he complied as Vanbrimmer retrieved the Ruger .380 semiautomatic pistol from Vega's pocket and secured it in his patrol vehicle. Vega told Vanbrimmer that there were no issues between him and his friends. He also stated, Officer Tamayo shot Officer Mascareno.

At 0159:48 hours, an airship, piloted by Deputy Charles Leon and his observer Deputy Jacob Hernandez, assigned to the San Bernardino County Sheriff's Department Emergency Operations Division Aviation Unit arrived on scene. They located the campsite and began a systematic search of the campsite and surrounding area for Officer Tamayo. Hernandez utilized an infrared camera, night vision goggles, and a spotlight to determine the campsite was vacant.

At 0213:34 hours, Deputy Leon used the Public Address (PA) system to identify himself and asked Officer Tamayo to present himself. At 0228:43 hours, Deputies Leon and Hernandez spotted a light approximately one quarter mile south of the campsite and flew in that direction.

According to Officer Tamayo, the last thing he recalled was moving up the mountain in a northwesterly direction away from a threat. He suddenly woke up, laying on his back, with his gun in his hand and recognized a police helicopter was circling overhead. He immediately felt relieved as he thought help was here to assist him and his friends.

Officer Tamayo intended to call 911 on his cellular phone to let them know where he was; however, as he reached for it, he realized it was missing along with his wallet and keys. According to Officer Tamayo, he stayed where he was until the helicopter light focused on him. From his supine position, he waived his arms over his head to identify his position to the airship

At 0230:03 hours, Tamayo was located lying in a supine position. According to Deputy Hernandez, Tamayo was moving his legs and arms but was unresponsive to his requests over the PA system for Tamayo to identify himself. At 0236:23 hours, the airship broadcast that Tamayo acknowledged their request and signaled in the affirmative he was Tamayo.

An arrest team was established by Sergeant Phillips. The team included Phillips and Deputies Vanbrimmer, Whitney, and Deputy Kyle Schuler assigned to the San Bernardino County Sheriff's Department Victor Valley patrol and Deputies Cara

Umphlett and Stephen Esparza assigned to the San Bernardino County Sheriff's Department Apple Valley patrol.

At 0245:52 hours, the arrest team led by Sergeant Phillips was directed by the airship toward Officer Tamayo's location. According to Tamayo, before the arrival of the arrest team, he set his gun down onto the ground. He followed the verbal commands from the airship and the deputies on the ground and at their direction, he laid down in a prone position.

At 0258:03 hours, Deputy Vanbrimmer approached Tamayo and with the assistance of Deputy Umphlett he handcuffed Tamayo without incident. According to Vanbrimmer, Tamayo spontaneously stated, "What's going on? I was being shot at."

Officer Mascareno was treated by a responding San Bernardino County Fire Department Rescue Ambulance and transported to Apple Valley Airport. He was airlifted to the Arrowhead Regional Medical Center and treated for a single gunshot wound to his left shoulder.

Investigators from the San Bernardino County Sheriff's Department Homicide Detail responded to the scene along with investigators from the Los Angeles Police Department's Force Investigation Division (FID). At approximately 0700 hours, Sergeant Phillips provided a briefing to investigators outlining the investigative efforts and the subsequent arrest of Officer Tamayo.

The San Bernardino County Sheriff's Department Homicide Detail advised they would proceed as the primary investigative entity for the criminal investigation and designated Detective Josh Guerry as the primary investigator. Their investigators maintained investigative control of the crime scene until a search warrant was procured and their investigation, including the collection of evidentiary items, was complete.

Officer Tamayo was transported to the Victorville Police Station and booked for attempt murder, 664(A)/187 Penal Code (PC). At approximately 0914 hours, a search warrant to collect blood was presented to Tamayo. The collected blood sample was later analyzed, and it was determined his Blood Alcohol Concentration (BAC) was .085.

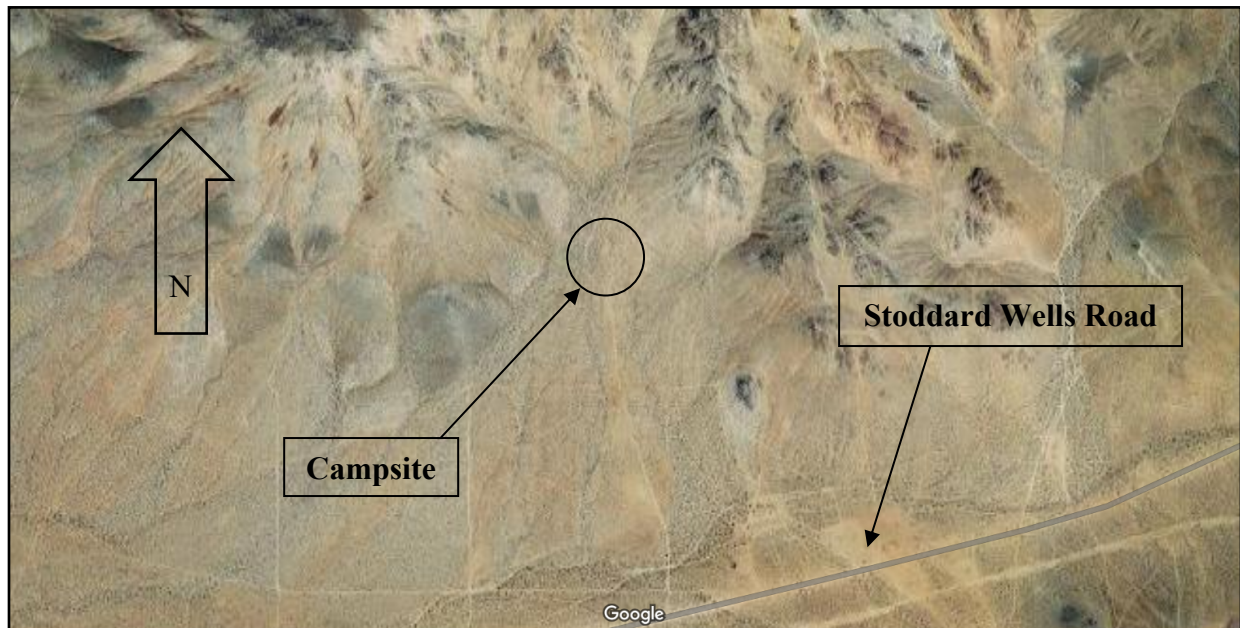
On May 3, 2020, at approximately 1845 hours, the crime scene was relinquished to FID investigators.

### **Scene Description**

Stoddard Wells OHV area was in the San Bernardino County desert northeast of Victorville, CA and southeast of Barstow, CA. The campsite selected by Officer Tamayo was approximately 11 miles northeast of Victorville. Specifically, the site was approximately 7 miles east on Stoddard Wells Road from Interstate 15 and approximately half a mile north of Stoddard Wells Road. This area was only accessible by dirt roads and there were no permanent structures, businesses, or residences in the vicinity of the camping site. There were two campsites in the immediate vicinity of Officer Tamayo's campsite. The closest site was approximately one third of a mile



directly south and the second site was approximately one half of a mile southeast from Tamayo's site.



### **Canvass for Witnesses**

A canvass was not an option for this investigation; however, the statements of any witnesses interviewed were recorded and transcribed and are contained in this report. Copies of their statement forms are in the FID casebook.

## **Involved Employee**

**Officer Ismael Tamayo** was a male Hispanic with brown hair and brown eyes. At the time of the incident, he was five feet ten inches tall, weighed approximately 210 pounds, and had a date of birth of May 29, 1975. Tamayo was identified by California Information and Identification (CII) No. A21425128.

On May 5, 2020, detectives from the San Bernardino County Sheriff's Department presented a criminal complaint to the San Bernardino County District Attorney's Office. Formal charges were filed against Officer Tamayo for Assault with a Deadly Weapon, 245(A)(2) PC.

On May 6, 2020, FID Detective III Peter Stone, Serial No. 27168, completed a complaint face sheet naming Officer Tamayo as the accused, CF No. 20-001213.

## **Injuries**

Officer Mascareno was transported by helicopter to Arrowhead Regional Medical Center. He was admitted and treated for a single, through and through gunshot wound to his left shoulder. He was released from the hospital May 4, 2020.

## **Evidence**

The crime scene was preserved and processed by investigators from the San Bernardino County Sheriff's Department. As a result of their examination, numerous items of evidence were recovered, including, two discharged cartridge cases, two semiautomatic pistols, bloody clothing, two cellular phones, four rifles and one shotgun.

**Note:** According to Officer Mascareno, he believed Officer Tamayo fired three rounds while Sergeant Vega saw two muzzle flashes and heard two gunshots. According to Officer Tamayo, he believed he fired three rounds. If Tamayo's pistol was loaded to capacity, the below magazine count supports three rounds being fired from his pistol; however, the crime scene investigation only identified and recovered two discharged cartridge cases.

Deputy Schuler completed a Gunshot Residue (GSR) kit on Officer Tamayo, Item A, and Deputy Whitney completed a GSR kit on Officer Mascareno, Item B. The San Bernardino County Sheriff's Department Scientific Investigations Division completed an analysis of the GSR kits and determined both were positive for the presence of GSR particles.

## **Weapons**

**Ismael Tamayo** was armed with his Department-authorized .40 caliber Glock Model 22 semiautomatic pistol. The pistol was carried in a holster on his right hip. When recovered, the pistol was loaded with thirteen rounds of Smith and Wesson Winchester Ranger 180 grain with one round in the chamber and twelve rounds in the magazine. If the pistol had been loaded to capacity at the time of the shooting, it would have had a total of 16 rounds. The condition of the pistol post shooting would be consistent with Tamayo having fired three rounds; however, investigators recovered only two expended cartridge cases at the scene.

Detective II Alejandro Soria, Serial No. 36359, Force Investigation Division (FID) verified Officer Tamayo's .40 caliber Glock pistol was entered onto his Firearm Inventory Tracking System on January 27, 2009.

Officer Tamayo's pistol, Item D2, magazine, Item D3, ammunition removed from the pistol, Items D4 and D5, along with the two discharged cartridge cases, Items A8 and A9, were analyzed by San Bernardino County Sheriff's Department Scientific Investigations Division. The analysis included a visual examination, latent print analysis, and swabbing for deoxyribonucleic acid (DNA). Any results of the analysis have been retained by the San Bernardino County Sheriff's Department.

## **Firearms Analysis**

San Bernardino County Sheriff's Department investigators collected two expended cartridge cases during this investigation. They did not identify any fired projectiles or ballistic impacts. Investigators from Force Investigation Division (FID) requested copies of all completed analysis; however, at the time of this report nothing has been received.

## **Visual Documentation**

Responding deputies from San Bernardino County Sheriff's Department were not equipped with body-Worn Video (BWV) and their vehicles were not equipped with Digital In-Car Video (DICVS).

## **Social Media**

Personnel assigned to FID's Cyber Unit monitored social media sites from the date of the incident until the submission of this investigation. No additional evidence, information or witnesses were identified.

## **Photographs**

Photographs of the scene and associated evidence are stored under Control Nos. D0797281.

## **Notifications**

At approximately 0420 hours, Real-Time Analysis and Critical Response (RACR) Division was notified of the Categorical Use of Force and the details of the subsequent notifications are attached.

## **Personnel at Scene**

Force Investigation Division, Detective Soria arrived on scene at approximately 0625 hours.

## **Communications**

The digitally recorded interviews of the involved and percipient officers and civilian witnesses are stored in the Training Evaluation and Management System (TEAMS II) database.

## **Investigators' Notes**

1. Officer Tamayo and Sergeant Vega entered BLM land as they travelled east on Stoddard Wells Road. However, unbeknownst to them, they wandered onto privately owned land while selecting a location for their campsite. Investigators noted there were no signs or fences to alert or prohibit anyone from trespassing on this property. In fact, the area had OHV trails, as did the BLM land in the surrounding area. There was also evidence of people having camped and having discharged weapons at their campsite.
2. The campers from the first site Officer Mascareno approached left the location before they were identified; therefore, they were not interviewed.

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## **CHIEF OF POLICE REPORT**<sup>20</sup>

### **Chief of Police Findings**

**Tactics** – Administrative Disapproval, Officer Tamayo.

**Drawing/Exhibiting** – Out of Policy, Administrative Disapproval, Officer Tamayo.

**Lethal Use of Force** – Out of Policy, Administrative Disapproval, Officer Tamayo.

### **Chief of Police Analysis**

Officer Tamayo drove, with Sergeant Vega, to attend a preplanned trip. Officer Tamayo set up a campsite where he and Sergeant Vega met with Officer Mascareno. After discharging their weapons during target practice, Officer Tamayo consumed alcohol.

During the evening, Officer Tamayo heard what he perceived to be a threatening voice followed by a gunshot. Officer Tamayo did not hear what the voice had stated and could not see the source of the voice.

Officer Tamayo drew his firearm from his holster which was on his hip. At this point, Officer Tamayo had walked over to his pickup truck's passenger side, near the bed of the truck, and pointed his firearm in the direction of Sergeant Vega and Officer Mascareno. Officer Mascareno attempted to deescalate the situation and communicated with Officer Tamayo, asking him to put his firearm down. Officer Tamayo momentarily pointed his gun away from Officer Mascareno and Sergeant Vega. However, when Officer Mascareno walked to his (Officer Mascareno) truck to retrieve an item, Officer Tamayo again pointed his firearm at Officer Mascareno.

Officer Tamayo got down onto one knee as he pointed his firearm at Officer Mascareno. Officer Tamayo fired directly at Officer Mascareno as Officer Mascareno continued his attempts at de-escalation. Officer Tamayo fired three rounds at Officer Mascareno, striking Officer Mascareno in his shoulder. The actions of Officer Tamayo in his response to the voice and of discharging his pistol at Officer Mascareno were not appropriate and not within Department policies and procedures.

### **Tactics**

- Department policy relative to a Tactical Debrief is: *"The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance."*

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<sup>20</sup> The information provided in this section summarizes the analysis and findings set forth in the Chief of Police's report for this case.

Department policy relative to Administrative Disapproval is: *“A finding, supported by a preponderance of the evidence that the tactics employed during a CUOF incident unjustifiably and substantially deviated from approved Department tactical training” (Los Angeles Police Department Manual, Volume 3, Section 792.05).*

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

## **Tactical De-Escalation**

- *Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

### *Tactical De-Escalation Techniques*

- **Planning**
- **Assessment**
- **Time**
- **Redeployment and/or Containment**
- **Other Resources**
- **Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)**

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

**Planning** – Approximately two weeks prior to the incident, Officer Tamayo planned a trip to meet with Officer Mascareno and Sergeant Vega, where they would set up metal targets and practice firing their weapons. Additionally, the officers would camp at the location for a night. Officer Tamayo planned to cook dinner for Officer Mascareno and Sergeant Vega later in the evening. Officer Tamayo maintained a firearm holstered on his hip throughout his time at the campground as he cooked and later sat around their campfire.

The UOFRB noted the purpose of the trip was to discharge their weapons as made evident by Officer Tamayo ensuring he was camping in an area where no one else would be interrupted or placed in danger from discharging their firearms. The UOFRB was critical of Officer Tamayo's decision to maintain his firearm holstered on his hip while knowing he was going to be consuming alcoholic beverages. Later in

the evening, Officer Tamayo also began drinking liquor. The UOFRB noted Officer Tamayo had numerous opportunities throughout the evening to secure his firearm in his vehicle prior to consuming alcoholic beverages.

**Assessment** – Officer Tamayo stated that he walked west, approximately 30 to 40 feet beyond his truck, and urinated. Officer Tamayo heard a threatening voice approximately 90 feet south of him. Officer Tamayo could not determine what the voice was saying to him, but felt threatened. Officer Tamayo believed that because of this, he was being ambushed and Officer Mascareno and Sergeant Vega had been killed. Officer Tamayo drew his firearm from its holster on his hip and aimed in the direction of the voice. Officer Tamayo could not observe the source of the voice; however, Officer Tamayo discharged three rounds in the direction of the voice.

The UOFRB noted Officer Tamayo stated during his interview with FID investigators, that he was unable to determine what the voice was saying to him to make him feel threatened. Officer Tamayo had no clear, distinguishable target, and could not articulate what the threat was at the time. The UOFRB noted Officer Tamayo's failure to assess the nature of what he perceived to be a threat, as well as his failure to assess his target which led to Officer Tamayo striking Officer Mascareno in the shoulder when Officer Tamayo discharged his pistol. In doing so, Officer Tamayo's failure to assess led to violations of basic firearm safety rules and, in turn, Officer Mascareno being fired upon.

**Time** – There was no indication that Officer Tamayo utilized time to decrease the intensity of this incident. Based on the preponderance of the evidence, the Chief determined that Officer Tamayo had a significant opportunity to use more time to determine his course of actions. Officer Tamayo was not under any threat of injury or harm and his actions escalated the incident.

**Redeployment and/or Containment** – There are no indications Officer Tamayo utilized redeployment or containment during this incident. Based on the preponderance of the evidence, the Chief determined that the incident did not warrant Officer Tamayo to redeploy or contain the location as no threat to him existed.

**Other Resources** – There are no indications that Officer Tamayo utilized other resources during this incident. Based on a preponderance of the evidence, the Chief determined that the incident did not warrant the use of additional resources as Officer Tamayo was not under any threat of harm.

**Lines of Communication** – Officer Tamayo stated that he heard what he perceived to be a threatening voice and stated he heard a gunshot, which came from the direction of the voice. Officer Tamayo did not relay any information to Officer Mascareno or Sergeant Vega, or warn them of the occurrence.

The circumstances of this incident were unique as it involved Officer Tamayo stating that he was responding to a perceived threat, while a preponderance of the evidence indicates that no threat existed. The UOFRB discussed the Officer Tamayo's recollection of the incident and how it was in direct conflict with that of Officer Mascareno and Sergeant Vega. Officer Mascareno and Sergeant Vega reported that they did not hear a voice and did not hear a gunshot. The UOFRB discussed that while Officer Tamayo's recollection of the event was invalidated by Officer Mascareno and Sergeant Vega's statements, Officer Tamayo's actions, were he to have encountered a threat as one that he perceived, would have still violated department policy. The UOFRB determined that had Officer Tamayo utilized planning, assessment, time, redeployment, other resources, and better lines of communication would have allowed Officer Tamayo to avoid this circumstance altogether.

During the review of the incident, the following Debriefing Topics were noted:

**Debriefing Point No. 1 Off Duty Tactics** (Substantial Deviation, without justification – Officer Tamayo)

*A police officer is the most conspicuous representative of government, and to the majority of the people, the officer is a symbol of stability and authority upon whom they can rely. An officer's conduct is closely scrutinized, and when the officer's actions are found to be excessive, unwarranted, or unjustified, they are criticized far more severely than comparable conduct of persons in other walks of life. Since the conduct of officers, on- or off-duty, may reflect directly upon the Department, officers must at all times conduct themselves in a manner which does not bring discredit to themselves, the Department, or the City (Los Angeles Police Department Manual, Volume No. 1, Section 230.35, Responsibility of Off-Duty Officers).*

In this circumstance, Officer Tamayo had consumed numerous beers and liquor despite having knowledge that there were numerous firearms nearby, as well as the pistol he had holstered on his hip. Officer Tamayo had opportunity to secure his pistol prior to consuming any alcoholic beverage. Approximately nine hours after the OIS occurred, a blood sample was collected and Officer Tamayo was determined to have a Blood Alcohol Concentration (BAC) of 0.085%.<sup>21</sup>

The UOFRB discussed Officer Tamayo's decision to remain with a holstered firearm while consuming beer and liquor. The UOFRB noted Officer Mascareno and Sergeant Vega's statements about Officer Tamayo appearing to be intoxicated. Officer Tamayo had numerous opportunities where he could have secured his firearm prior to consuming alcohol. Officer Tamayo had stated he stopped participating in target practice while Officer Mascareno had continued into the night. The UOFRB emphasized that officers should abstain from consuming alcohol while

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<sup>21</sup> Officer Tamayo's blood sample was taken under the authority of a search warrant.



maintaining control of firearms and in this case, it was done so with a disregard to safety.

In addition, the UOFRB determined that Officer Tamayo's actions were in stark contrast with the Department's expectation of an officer. Officer Tamayo placed Officer Mascareno and Sergeant Vega's lives at risk by pointing his loaded firearm at both of them while he was intoxicated and ultimately firing at and striking Officer Mascareno who presented no threat and was unarmed.

**OIG Note No. 2:** The available evidence in this case indicates that Officer Mascareno was in possession of a firearm at the time of Officer Tamayo's officer-involved shooting; however, there is no evidence to indicate that he presented any threat to Officer Tamayo.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that Officer Tamayo's actions were a substantial deviation, without justification, from approved Department tactical training. In order to enhance future performance, the Chief directed that this be a topic of discussion during the Tactical Debrief.

**Debriefing Point No. 2 Basic Firearm Safety Rules** (Substantial Deviation, without justification – Officer Tamayo)

*Firearms safety is critical. Officers must have the ability to draw, holster and manipulate weapons safely at all times, especially under stressful conditions. Firearms safety rules have been established based upon real life situations and are applicable at all times. Violations of any of the safety rules will not be tolerated.*

*The Four Basic Firearm Safety Rules*

1. *All guns are always loaded.*
2. *Never allow the muzzle to cover anything you are not willing to shoot.*
3. *Keep your finger off the trigger until your sights are aligned on the target and you intend to shoot.*
4. *Be sure of your target (Los Angeles Police Department Firearms Manual, July 2015).*

Officer Tamayo stated he heard a voice approximately ninety feet away as he urinated into a bush near his campsite. Officer Tamayo described his inability to see the source of the voice. Officer Tamayo believed the voice was threatening to him and had already killed Officer Mascareno and Sergeant Vega. In spite of Officer Tamayo's inability to see his target, which was the voice, Officer Tamayo stated that he drew his pistol and pointed at what he perceived to be the threat. Officer Tamayo pointed his pistol directly at Officer Mascareno and fired three times, striking Officer Mascareno.

Shortly after, Sergeant Vega attempted to de-escalate the situation and get Officer Tamayo to put his pistol away. However, Officer Tamayo then pointed his pistol at Sergeant Vega for unknown reasons.

The UOFRB discussed Officer Tamayo's disregard for safety and of the firearm safety rules. Officer Tamayo was aware his firearm was loaded and had been firing it earlier in the evening as part of his target practice. The UOFRB noted Officer Tamayo violated Basic Firearm Safety Rule number two. The UOFRB noted Officer Tamayo had pointed his gun at Officer Mascareno and Sergeant Vega who posed no threat to him and were attempting to de-escalate Officer Tamayo's behavior. Additionally, the UOFRB discussed Officer Tamayo's inability to determine what the voice was saying and could not articulate what the threat was and did not explain how it could be perceived as a deadly threat. Officer Tamayo could not see anyone and only heard the voice which he perceived as a threat and therefore could not acquire his sights on this threat, in violation of Basic Firearm Safety Rule number three. The UOFRB also noted that Officer Tamayo was not sure of his target and violated Basic Firearm Safety Rule number four.

The UOFRB was critical of Officer Tamayo's disregard for firearm safety causing Sergeant Vega and Officer Mascareno to be placed in serious and deadly danger with Officer Mascareno ultimately being shot.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that Officer Tamayo's actions were a substantial deviation, without justification, from approved Department tactical training. In order to enhance future performance, the Chief directed that this be a topic of discussion during the Tactical Debrief.

**Debriefing Point No. 3 Intradepartmental Cooperation** (Substantial Deviation, without justification – Officer Tamayo)

*If Involved in an Off-Duty Incident:*

- *Identify yourself in a loud, clear voice to responding uniformed personnel.*
- *Keep your hands away from any weapon(s) and don't make sudden moves that may appear threatening (i.e., reaching for wallet or badge).*
- *Follow all commands given to you by uniformed personnel (this is not the time to let ego get in the way)*
- *Relay any suspect(s) information and direction of travel as soon as possible (Off-Duty Actions, Training Bulletin, August 2017)*

Officer Tamayo was found by the San Bernardino Sheriff's Department air unit and was lying on his back with his pistol in his hand. Officer Tamayo was ordered to identify himself and to comply with orders from the airship through the PA system.

However, the FID investigation determined that for approximately 15 minutes, Officer Tamayo did not comply with the sheriff deputy's orders.

The UOFRB discussed the extensive delay in Officer Tamayo complying with commands from San Bernardino County Sheriff's Deputies. Officer Tamayo stated that he awoke while on top of the mountain, to the sight of the airship. Officer Tamayo stated he could not understand the commands given to him by the deputies in the air ship. The UOFRB noted the deputies gave Officer Tamayo several commands and requested he confirm his identity. Officer Tamayo confirmed his identity after numerous requests, but continued to hold his pistol and change it from one hand to another, causing deputies to believe Officer Tamayo was unsafe to approach. After many more commands to put his pistol down and away from himself, Officer Tamayo complied approximately 15 minutes later. The UOFRB was critical of Officer Tamayo's actions as he did not display the Department's standard for cooperation with other law enforcement agencies. His delay in complying with the deputies' orders escalated the danger of the incident.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that Officer Tamayo's actions were a substantial deviation, without justification, from approved Department tactical training. In order to enhance future performance, the Chief directed that this be a topic of discussion during the Tactical Debrief.

## **Command and Control**

- *Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

*Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage resources. The senior officer or any person on scene who has gained enough situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (Los Angeles Police Department, Training Bulletin, Volume XLVII Issue 4, July 2018).*

*Line Supervision – Defined. A supervisor who has the specific responsibility of issuing directions and orders to designated subordinates shall be considered as having the duty of line supervisor and shall be held accountable for achieving conformance with the directions and orders that he/she issues (Los Angeles Police Department Manual, Volume 3, Section 135).*

*Incident Commander (IC) – In accordance with Department Policy, the IC sets the objectives, the strategy and directs the tactical response. Directing the tactical response means applying tactics appropriate to the strategy, assigning the right resources and monitoring performance (Los Angeles Police Department, Supervisor's Field Operations Guide, Volume 2, Emergency Operations Guide).*

Sergeant Vega, while sitting around the campfire, observed Officer Tamayo point his firearm at Officer Mascareno. Sergeant Vega became frightened and believed it was uncharacteristic of Officer Tamayo to violate the firearm safety rules. Sergeant Vega observed Officer Tamayo fire two rounds at Officer Mascareno. Sergeant Vega stood up and ordered Officer Tamayo to drop his firearm. Sergeant Vega ran to the front of Officer Tamayo's truck and observed Officer Tamayo pointing his firearm at Sergeant Vega. Sergeant Vega was in disbelief over Officer Tamayo's actions. Sergeant Vega heard a crash and discovered Officer Mascareno had fallen onto a table. Officer Mascareno asked Sergeant Vega to retrieve his truck keys so they could drive away. Sergeant Vega could not find the keys and realized he could no longer see Officer Tamayo. Worried that Officer Tamayo would approach, Sergeant Vega turned off a light on the grill. Sergeant Vega ordered Officer Mascareno to go find help while Sergeant Vega tried to distract Officer Tamayo. Sergeant Vega became worried Officer Tamayo would shoot them both if Sergeant Vega and Officer Mascareno walked together. Sergeant Vega began attempts to communicate with Officer Tamayo. Sergeant Vega believed Officer Tamayo would drop his firearm when ordered to do so. However, Officer Tamayo did not respond to Sergeant Vega.

When Sergeant Vega no longer heard movement, he crouched down and texted Officer Tamayo's wife, Nicole Tamayo, and informed her of the shooting. Sergeant Vega heard Officer Tamayo's phone ringing to his north. Sergeant Vega ran south and approached what he believed was a bush, however it was actually Officer Tamayo. Sergeant Vega heard Officer Tamayo request, in a voice he did not recognize, for Sergeant Vega to identify himself. Sergeant Vega tried to communicate with Officer Tamayo, but Officer Tamayo stated he did not know Sergeant Vega. Sergeant Vega became frightened and ran away. Sergeant Vega stated he was unsure, but believed that he had heard two gunshots as he ran away. Sergeant Vega carried a firearm with him, but stated he did not want to engage Officer Tamayo in the dark; however, Sergeant Vega was frightened and believed Officer Tamayo was going to hunt him and find him. Sergeant Vega continued to run and heard Officer Mascareno knocking on a nearby trailer. Sergeant Vega tried to make his way down to Officer Mascareno, but continued to stop to listen for

Officer Tamayo's footsteps and moved slowly to be able to collect his thoughts. As Sergeant Vega arrived and made contact with Officer Mascareno he observed deputies arriving at their location.

While at scene with the San Bernardino County Sheriff's Deputies, Sergeant Vega notified the deputies that he had to make notifications to his lieutenant. Sergeant Vega called Lieutenant J. Barkley, Serial No. 32428, Hollenbeck Patrol Division, Watch Commander, to notify him of the incident. Sergeant Vega also notified Captain S. Monico, Serial No. 30364, Hollenbeck Patrol Division, Commanding Officer, via text message, of the incident. This occurred shortly before Officer Tamayo was taken into custody.

The actions of Sergeant Vega were consistent with Department supervisory training and the Chief's expectations of field supervisors during a critical incident.

### **Tactical Debrief**

- In conducting an objective assessment of this case, the UOFRB determined, and the Chief concurred, that Officer Tamayo's actions were a substantial deviation, without justification, from approved Department tactical training, thus requiring a finding of Administrative Disapproval.

Each tactical incident also merits a comprehensive debriefing. In this case, there were areas identified where improvement could be made. A Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

Therefore, the Chief directed that Officer Tamayo attend a Tactical Debrief and that the specific identified topics be discussed.

**Note:** Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control;
- Lethal Force.

## General Training Update (GTU)

- As of this report, Officer Tamayo has not attended the General Training Update (GTU).<sup>22</sup>

## Drawing/Exhibiting

- Department policy relative to drawing and exhibiting a firearm is: *“An officer’s decision to draw or exhibit a firearm should be based on the tactical situation and the officer’s reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified”* (Los Angeles Police Department Manual, Volume No. 1, Section 556.80)

## Officer Tamayo

According to Officer Tamayo, during the entirety of the trip he had his Glock 22 pistol holstered on his hip. After dinner, Officer Tamayo stood up from his chair, which had been situated around the campfire, and walked away to urinate. Officer Tamayo walked to a bush and urinated. Officer Tamayo heard a voice which “mumbled” out in front of him approximately “90 feet” away from a southern direction. Officer Tamayo could not observe anyone since it was dark and could not understand or recognize the voice, but knew that the voice he had heard was not Sergeant Vega or Officer Mascareno’s. Officer Tamayo looked to his left where Officer Mascareno and Sergeant Vega had been standing next to the fire pit and did not observe them. Officer Tamayo thought it was odd that they were no longer there. Officer Tamayo perceived the voice as a “threatening gesture” and attempted to “squint” to see it, but was unable to see anyone. Officer Tamayo looked forward again in a southern direction and then heard a gunshot coming from that direction. Officer Tamayo believed the individual was utilizing a “suppressor” since he was unable to observe the muzzle flash of the gun. Officer Tamayo believed the voice was trying to *draw him* away so he would not observe that Officer Mascareno and Sergeant Vega had been shot. Officer Tamayo immediately got down onto his knee and drew his pistol.

Officer Tamayo recalled,

*And I took a Glock 10-mill, that's my hunting sidearm, and I had a Glock 22, 40-cal.<sup>23</sup> I had the Glock 22... In a holster on my hip.<sup>24</sup>*

*I get up from my chair to go urinate to kind of to the right of my truck. There was like a little bush on the side, so I go over there and urinate. And then I'm finishing up*

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<sup>22</sup> On May 3, 2020, Officer Tamayo was assigned home and unable to attend a GTU.

<sup>23</sup> Officer Tamayo Page 17, Lines 11-13.

<sup>24</sup> *Id.*, Page 33, Line 8 and 10.

*and then out in front of me in the darkness I hear a voice. Something was said or mumbled. I couldn't understand. It was a voice I didn't recognize... So I kind of like look in that direction, but I can't see because it's pitch dark. And then I look to my left where Mark and Javier were standing next to the firepit. I didn't see them. I was like, man, that's kind of odd. And then I kind of look forward and then I hear a gunshot from that direction where that voice came from.<sup>25</sup>*

*I perceived like it was a threatening gesture or something was said... Because in the middle of the night who approaches someone like that... I was even like trying to squint kind of like to see I could make out. I couldn't see anything.<sup>26</sup>*

*It's hard to say, but I'm going to approximate maybe 90 feet.<sup>27</sup>*

*So I look kind of back south toward that voice and I hear a gunshot coming from that direction where that voice came from... It was a single shot... And now this guy was trying to draw me in away from them so I wouldn't see that they were down... I figured -- I didn't hear the -- I didn't see the muzzle flash, so either he had a flash suppressor or something, but that's what I was -- everything went so quick in my head.<sup>28</sup>*

*So I immediately get down on a knee. I unholster.<sup>29</sup>*

The UOFRB conducted a thorough evaluation of the reasonableness of Officer Tamayo's Drawing/Exhibiting of his pistol. The UOFRB noted Officer Tamayo drew his pistol on one occasion during this incident. The UOFRB discussed Officer Tamayo's account of the incident and noted it was in direct opposition to that of Officer Mascareno and Sergeant Vega's recollection. Officer Mascareno and Sergeant Vega did not hear the voice that Officer Tamayo perceived as a threat and neither heard a gunshot, which Officer Tamayo stated he heard coming from the direction of the voice. Additionally, Officer Tamayo could not articulate what the voice said to cause Officer Tamayo to reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified. Officer Tamayo drew his pistol and pointed it at Sergeant Vega and Officer Mascareno even as they posed no threat to Officer Tamayo. Officer Mascareno was able to de-escalate the situation momentarily and asked Officer Tamayo to put his pistol away to which Officer Tamayo lowered his pistol. Moments later, Officer Tamayo brought his pistol back up and pointed it directly at Officer

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<sup>25</sup> *Id.*, Page 21, Lines 11-17 and Lines 19-25.

<sup>26</sup> *Id.*, Page 38, Lines 15-16 and Lines 18-19 and Page 39, Lines 6-8.

<sup>27</sup> *Id.*, Page 39, Lines 12-13.

<sup>28</sup> *Id.*, Page 41, Lines 17-19 and 23-24 and Page 42, Lines 14-16 and 18-21.

<sup>29</sup> *Id.*, Page 22, Lines 2-3.

Mascareno. The UOFRB determined it was clear neither Officer Mascareno nor Sergeant Vega posed a threat to Officer Tamayo.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officer Tamayo would not reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the Chief found Officer Tamayo's Drawing/Exhibiting to be Out of Policy, Administrative Disapproval.

## **Policy on the Use of Force**

### **Use of De-Escalation Techniques<sup>30</sup>**

*It is the policy of this Department that, whenever practicable, officers shall use techniques and tools consistent with Department de-escalation training to reduce the intensity of any encounter with a suspect and enable an officer to have additional options to mitigate the need to use a higher level of force while maintaining control of the situation.*

### **Factors Used to Determine Objective Reasonableness<sup>31</sup>**

*The Department examines reasonableness using Graham v. Connor and the articulated facts from the perspective of a Los Angeles Police Officer with similar training and experience, in the same situation, based on the totality of the circumstances.*

*In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case. Those factors may include, but are not limited to:*

- *The feasibility of using de-escalation tactics;*
- *The seriousness of the crime or suspected offense;*
- *The level of threat or resistance presented by the subject;*
- *Whether the subject was posing an immediate threat to officers or a danger to the community;*
- *The potential for injury to citizens, officers or subjects;*
- *The risk or apparent attempt by the subject to escape;*
- *The conduct of the subject being confronted (as reasonably perceived by the officer at the time);*

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<sup>30</sup> Office of the Chief of Police (OCOP), Special Order No. 4, "Policy on the Use of Force - Revised," was adopted by the Department on February 5, 2020 and amended LAPD Manual, Volume 1, Section 556.10.

<sup>31</sup> *Id.*



- *The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;*
- *The availability of other resources;*
- *The training and experience of the officer;*
- *The proximity or access of weapons to the subject;*
- *Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number officers versus subjects; and,*
- *The environmental factors and/or other exigent circumstances.*

### **Use of Force – Deadly<sup>32</sup>**

*It is the policy of this Department that deadly force shall be used only when necessary in defense of human life. Specifically, deadly force shall be used only to:*

- *To defend against an imminent threat of death or serious bodily injury to the officer or to another person; or*
- *To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.*

*In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible.*

**Note:** *Because the application of deadly force is limited to the above scenarios, an officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or another person.*

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<sup>32</sup> Office of the Chief of Police (OCOP), Special Order No. 4, "Policy on the Use of Force - Revised," was adopted by the Department on February 5, 2020 and amended LAPD Manual, Volume 1, Section 556.10.

## The Department's Evaluation of Deadly Force<sup>33</sup>

*The Department will analyze an officer's use of deadly force by evaluating the totality of the circumstances of each case consistent with the California Penal Code Section 835(a), as well as the factors articulated in Graham v. Connor.*

### **Officer Tamayo – .40 caliber, Glock 22 pistol, three rounds in a southerly direction.**

**Note:** Officer Tamayo stated that he believed that he discharged a total of three rounds, which was consistent with the post-OIS magazine count of Officer Tamayo's pistol. Officer Mascareno believed he heard three rounds being fired at him by Officer Tamayo. Sergeant Vega observed and heard two gunshots and two expended cartridge casings were recovered. Based on the investigation, FID investigators determined that a total of three rounds were discharged by Officer Tamayo.

According to Officer Tamayo, after perceiving the voice and hearing a gunshot fired in his direction, he got down onto his knee, and discharged three rounds in a southerly direction. Officer Tamayo reverted to his "military training" and got up then conducted a "lateral bound" to his right to obtain cover. Officer Tamayo yelled out for Officer Mascareno and Sergeant Vega and looked in their last known direction. Officer Tamayo believed they were all getting "ambushed." Officer Tamayo believed the voice was someone who was trying to distract him during the ambush and believed that person already killed Officer Mascareno and Sergeant Vega. Officer Tamayo decided to keep moving and walked up the nearby mountain for higher ground until he could come up with a plan.

Officer Tamayo recalled,

*I fire three shots in that direction of that voice.*<sup>34</sup>

*So from where I was standing, I just took a knee and I returned -- I fired about three shots in the direction of that voice and that shot.*<sup>35</sup>

*And then from there I get up. I kind of -- I kind of revert to my military training, so I kind of do a lateral bound kind of to my right, find another position and get behind those -- there was hardly any cover, but kind of find some low ground... I say, "Mark, Vega," like really like loud. And I'm looking in the direction where they're at. I didn't see them. I was like -- I was kind of in shock. I'm like what happened? I go*

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<sup>33</sup> *Id.*

<sup>34</sup> Tamayo, Page 22, Lines 3-4.

<sup>35</sup> *Id.*, Page 43, Lines 6-9.

*we're getting ambushed. The guy to the front of me was trying to distract me while they probably took out my friends already, because I didn't hear them or see them... I just decided to kind of keep moving up the mountain away while I come up with a plan.*<sup>36</sup>

*So I figured there was a bunch of -- or a couple guys that took them out and this guy was trying to draw me in. So I figured my best move is probably to go up to the high ground.*<sup>37</sup>

**Background** - Officer Tamayo did not discuss his background during his interview regarding the OIS, but did state he considered his background when deciding on a place to camp. Officer Tamayo stated he chose a location with a background which would not allow rounds to go through and hit anyone in the area. Therefore, Officer Tamayo chose a campsite that had a mountain in its background. The FID investigation determined that the campsite area was only accessible by dirt roads and there were no permanent structures, businesses, or residence in the vicinity of the camping site. There were two campsites in the immediate vicinity of Officer Tamayo's campsite. The closest site was approximately one third of a mile directly south and the second site was approximately one half of a mile southeast from Tamayo's campsite.

Officer Tamayo stated that he discharged his pistol at an unspecific target which he perceived to be threat. Officer Tamayo stated he could not see from where the voice had come and could not see the source. Therefore, since Officer Tamayo did not observe his perceived threat, he was unable to observe the background of the perceived threat. The UOFRB determined Officer Tamayo's failure to assess the perceived threat and his inability to see his target made it evident that he therefore did not assess his background during the OIS. The Chief also noted that based on the preponderance of the evidence, Officer Tamayo in fact discharged his pistol at Officer Mascareno. While the Chief took into consideration the selection of location of the campsite, it is evident that Officer Tamayo did not consider his background when he discharged his pistol at Officer Mascareno.

In this case, the UOFRB conducted a thorough review of the incident. During their review, the UOFRB took into consideration the circumstances of this incident. However, the UOFRB noted that based on a preponderance of the evidence, it was evident Officer Tamayo's perceptions did not align with evidence provided by FID detectives and was in opposition to that of Officer Mascareno and Sergeant Vega's statements. The UOFRB noted Officer Tamayo's rationale for firing at an unknown target for an unknown threat, placing Officer Mascareno and Sergeant Vega's lives in danger was unreasonable as Officer Mascareno and Sergeant Vega posed no threat to Officer Tamayo.

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<sup>36</sup> *Id.*, Page 22, Lines 6-11, 12-19 and 22-24.

<sup>37</sup> *Id.*, Page 45, Lines 8-11.

Additionally, the UOFRB noted Officer Tamayo discharged three rounds at Officer Mascareno. From his statements, Officer Tamayo indicated that he had the presence of mind to perceive a single shot fired from the direction of the voice. However, Officer Tamayo aimlessly discharged three rounds without assessing between any of his rounds. Officer Tamayo also stated he discharged all three rounds in the direction of the threat which he could not see. Officer Tamayo discharged all three rounds in the direction of Officer Mascareno, striking Officer Mascareno once in the shoulder.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officer Tamayo, would not believe the circumstances presented an imminent threat of death or serious bodily injury nor that the use of deadly force would be objectively reasonable or necessary.

Therefore, the Chief found Officer Tamayo's Use of Lethal Force to be Out of Policy, Administrative Disapproval.

#### **Additional/Equipment**

- **Rendering Aid/Medical Treatment** - Officer Mascareno was struck by a bullet in his left shoulder which entered the front of his shoulder, near his clavicle, and exited his rear shoulder. Officer Mascareno was treated by a responding San Bernardino County Fire Department Rescue Ambulance and transported to Apple Valley Airport where he was airlifted to Arrowhead Regional Medical Center. Officer Mascareno was treated for a single gunshot wound to his left shoulder. Officer Mascareno was released on May 4, 2020.

#### **Audio/Video Recordings**

- **Digital In-Car Video System (DICVS)** – San Bernardino County Sheriff Department Deputy vehicles were not equipped with DICVS.
- **Body Worn Video (BWV)** – San Bernardino County Sheriff Department Deputies were not equipped with BWV devices and did not obtain video recordings.
- **Social Media** – None.
- **Outside Video** – None.

## **INSPECTOR GENERAL REVIEW**

### **Inspector General Analysis**

#### **Investigation Quality**

- No significant issues of concern were identified in relation to investigation quality.

#### **Training Issues**

- No significant issues of concern were identified in relation to training.

#### **Equipment Issues**

- No significant issues of concern were identified in relation to equipment.

#### **Detention**

- Does not apply.

#### **Tactical De-Escalation**

- The OIG concurs with the Chief's analysis.

#### **BWV and DICVS Policy Compliance**

- Does not apply.

### **Inspector General Recommendations**

#### **Tactics**

- The OIG concurs with the Chief's findings.

#### **Drawing/Exhibiting**

- The OIG concurs with the Chief's findings.

#### **Lethal Use of Force**

- The OIG concurs with the Chief's findings.



MARK P. SMITH  
Inspector General